

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

**ELEANOR McCULLEN, JEAN
BLACKBURN ZARRELLA,
GREGORY A. SMITH, ERIC CADIN,
CYRIL SHEA, NANCY CLARK, and
MARK BASHOUR,**

Plaintiffs,

v.

**MARTHA COAKLEY, Attorney
General for the COMMONWEALTH OF
MASSACHUSETTS, DANIEL F.
CONLEY, District Attorney for Suffolk
County, MARK G. MASTROIANNI,
District Attorney for Hampden County, and
JOSEPH D. EARLY, District Attorney
for Worcester County,**

Defendants

Civil Action 1:08-CV-10066-JLT

DECLARATION OF CYRIL E. SHEA, M.D

Cyril E. Shea, M.D., upon oath and affirmation, hereby deposes and says:

1. I make this declaration upon my personal knowledge of the facts, and I am competent to testify to the facts stated herein.
2. I am 84 years old. I am a father, grandfather, and great-grandfather. I am a retired orthopedic surgeon and a military veteran. I served about 12 months as a Navy apprentice seaman in World War II, and 4-5 months in Korea as a battalion surgeon with the Marines (3rd Battalion, 5th Marines) and as a surgeon in a field hospital for 4-5 months. I served

a total of 3.5 years of active military service. Thereafter, I spent 10-15 years on inactive military duty. I practiced medicine for over 40 years.

3. I oppose the practice of abortion because of my religious, moral, and scientific beliefs that induced abortion is the deliberate destruction of innocent human life. I believe that life begins at conception. As a result of my military service, I am well-acquainted with death and brutally inflicted bodily injured.

4. I am aware that the Commonwealth of Massachusetts has enacted a law (hereafter, "buffer law") that prohibits me from standing or entering a fixed buffer zone (hereafter, "zone") located on sidewalks and streets that surround the entrances, exits, and driveways of facilities that perform abortions unless I am using the sidewalk or street within the zone solely for the purpose of reaching a destination other than the facility.

5. For past six or seven years, I have been going to the public ways surrounding Planned Parenthood in Springfield (hereafter, "Planned Parenthood"), which is located at 3550 Main Street, Springfield, Massachusetts, in a medical/business complex containing three buildings at the corner of Main St. and Wason Ave. There are five driveways that permit ingress and egress to/from the complex. The five driveways service buildings at 3500 Main Street, 3550 Main Street, and 3640 Main Street. A true and accurate satellite depiction of the southernmost portion of the medical complex is attached as Ex. A. An L-shaped public sidewalk is situated along the entire perimeter of the medical complex. *See* Ex. A.

6. Planned Parenthood is located in a red brick building. *See* Ex. A (long rectangular building toward the lower left hand side). The building is surrounded by large parking lots on three sides that serve as a buffer between the building and the public streets and sidewalks. *Id.* Train tracks frame the western boundary of the medical complex. *Id.* As

measured in a direct line, the tracks are situated approximately 60-70 feet from the building housing Planned Parenthood.

7. Six other separate and distinct medical businesses are housed at 3550 Main Street along with Planned Parenthood. Also within the medical complex are two businesses in the building known as 3500 Main Street (Red Cross and Baystate Heart and Vascular Program), and ten businesses offering medical services plus a Subway restaurant in the building known as 3640 Main Street. True and accurate depictions of signage are attached as Ex. B-1 through B-3.

8. Because the medical complex houses twenty separate and distinct businesses, it is impossible for me to know which business or businesses a person intends to patronize when she enters the medical complex. It is therefore impossible for me to identify with particularity who might be patronizing Planned Parenthood as I'm standing on the public ways adjacent to the medical complex unless I'm told.

9. Main Street is a major thoroughfare in Springfield and is often busy with vehicular traffic that includes cars, trucks, heavy construction equipment, vans, motorcycles, and buses. At times, frequent noise created by vehicles makes even face to face conversation difficult. It makes oral communication at a distance impossible. Also, trains use the railroad tracks adjacent to the medical complex. I have observed trains pass by while at the complex.

10. At some point in the last two or three years I observed white lines painted on the sidewalk and street around the five driveways of the medical complex housing Planned Parenthood. These lines form an arc, with the top of the arc crossing just over the double yellow lines painted in the middle of Main Street and Wason Avenue. True and accurate depictions of these zones, beginning at the westerly driveway on Wason Ave. and continuing in

sequence to the northerly boundary of Main Street, are attached in Ex. C-1 through C-10. They also may be seen in the satellite photo in Ex. A.

11. The first day I observed the lines I also saw three police officers standing inside or near the western Wason Avenue arc. I also noted signs near the western Wason Avenue driveway. When I asked one of the police officers if I could go into the zone to read the signs, he said “no” because I was not permitted inside the zone. I could not read the signs from outside the zone because the print was too small. I now know this sign contains the language in M.G.L.A. 266 § 120E 1/2(b).

12. Two signs containing the text of the buffer law are situated at the medical complex. The first is located inside the zone a few feet from the western driveway on Wason Avenue. The second is located inside the zone a few feet from the middle driveway on Main Street. The printed text on these signs is so small I cannot read it from outside the zones.

13. I go to Planned Parenthood at least once a week, sometimes more, usually on Fridays. When there, I peacefully attempt to persuade men and women not to abort their babies by helping them make an informed decision. I wear a sign around my neck that states, “They’re Killing Babies Here”. The sign is approximately 3.5 x 2.5 feet and is held in place by a rope. A true and accurate depiction of me wearing my sign is attached as Ex. D. I try to offer medical information on the risks of surgery and the gestational process of human beings.

14. I often walk back and forth on the L-shaped public sidewalk that frames the medical complex. Prior to enactment of the buffer law, I often would walk with my sign.

15. I cannot avoid the zones by walking in the grassy areas or parking lots of the medical complex because “private property, no trespassing” signs are situated at every driveway entrance to the medical complex. A true and accurate depiction of the no trespassing sign is

attached as Ex. F. Because there is a lot of dangerous traffic, I will not cross Main Street in order to avoid the zone. True and accurate depictions of traffic on Main Street and Wason Avenue are attached as Ex. G-1 through G-3. As I understand the law, the existence of the five zones means I cannot walk with my sign along most of the public sidewalk adjacent to the medical complex without risking arrest and incarceration.

16. Though no warning signs are situated inside three of the five zones, I do not know whether I can lawfully enter them. All five white arcs are nearly identical in size and shape.

17. No one has informed me that I may enter or walk through one or more of these three zones with my sign without risking arrest and incarceration. This makes me believe all five arcs are buffer zones I cannot enter except for the sole purpose of reaching a particular destination on the other side of the zone. The arcs are very confusing.

18. A few weeks ago I observed a motor vehicle traveling on Main Street and, when it approached the buffer zone, it swerved and crossed the double yellow line as if to avoid the zone. It returned to its correct lane after it passed the zone.

19. In winter, snow piles frame the sidewalks and driveways of the medical complex. Depending on the severity of the winter weather, snowfall may be frequent and snow piles may be as high as four feet. Under these circumstances, there are very few areas of the sidewalk adjacent to the medical complex where I can walk my sign without violating the buffer law, especially because, as a result of the snow piles between the street and sidewalk, I cannot access the sidewalk except by walking up the zoned driveway. True and accurate depictions of me this past winter on the sidewalk adjacent to the medical complex are attached as Ex. H.

20. It is my understanding that, if I walk through a buffer zone while wearing my abortion-speech sign, I am in violation of the buffer law and subject to criminal sanctions even if my primary intent is to get to another destination.

21. To the degree that I'm able, I hand out literature in English and Spanish describing fetal development, alternatives to abortion, risks of abortion, and contraceptives. True and correct samples of literature I distribute are attached as Ex. E-1 through E-7. I do not speak Spanish so I can communicate to Spanish-speaking people only through literature.

22. Prior to enactment of the buffer law, most often I would stand a few feet from the Wason Avenue driveway entrance to the medical complex that is directly in front of the building housing Planned Parenthood. If I saw a car approach, I would wave and stretch out my hand to offer literature. If the car stopped, depending on which side of the driveway I was standing, I would approach the driver or passenger, offer literature, and try to engage them in conversation. Because the medical complex is private property, I never stood in the parking lot or next to the entrance of the building. I never stood in the driveway, either.

23. Now, with the buffer zones in place, I can no longer stand a few feet from the driveway. Approximately 90% of the people patronizing the businesses of the medical complex arrive by car and park in one of several lots. Never has anyone parked their car and returned to me to take my literature. Prior to enactment of the most recent buffer law, I often observed pro-life individuals hand out literature to occupants of vehicle entering the driveway. Since the enactment, I have not observed even a single instance where literature was distributed to occupants inside vehicles. I have observed no more than 5% of vehicle occupants park their car and then return to the sidewalk area for counseling or literature. It is my desire to give my literature to every person patronizing Planned Parenthood.

24. My intended audience is persons seeking abortions. When I have an opportunity to talk with someone, I do it in a non-confrontational manner. I say "hello", ask how they are, and wish them a good day. I never shout because, in my view, it is irritating to strangers and therefore counter-productive. I have observed others shout and, when they did, persons shouted at usually ignored the shouter. I always hope to speak to a person from a conversational distance, no more than six or eight feet.

25. Though people can see it, my sign is not a substitute for personal, individual counseling. My desire is to persuade, not merely to be seen. It is my experience that persons are persuaded through gentle and informative one-on-one counseling at a close distance. It is impossible for me to convey fetal development or the risks of abortion in only a few sentences.

26. The existence of the buffer zones has severely hampered my ability to effectively communicate my message to Planned Parenthood patrons. As a retired medical doctor and military surgeon, the knowledge and perspective I bring to a conversation is considerably different from the knowledge and perspective other prolife counselors can bring.

27. I have never blocked, impeded, or harassed any pedestrian, patron, or anyone else, nor have I ever engaged in any violence or breach of the peace.

28. Subsequent to the passage of the buffer law I have refrained from standing in any of the five zones at the medical complex out of fear I may be arrested and incarcerated. I desire to walk with my sign, orally communicate at a conversational level, and distribute literature on the sidewalks inside the zone. I cannot do this without risking arrest and incarceration.

29. On July, 26, 2011, I went to the Assessor's Office at Springfield City Hall to obtain commercial property records for the property known as 3550 Main Street. True and correct copies of the documents I obtained are attached as Exhibit I.

30. I am outraged at the enactment of the buffer law because, in my view, it strikes at the very heart of the Bill of Rights and its guarantee of freedom of speech—a guarantee that I and other military servicemen/servicewomen have proudly defended for the past 200+ years.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of August, 2011.

Cyril E. Shea, M.D.
Cyril E. Shea, M.D.